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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Forty-fifth session

SUMMARY RECORD OF THE 35th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 26 August 1993, at 3 p.m.

Chairman: Mr. AL-KHASAWNEH

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GE.93-85252 (E)

The meeting was called to order at 3.20 p.m.

CONSIDERATION OF DRAFT RESOLUTIONS AND DECISIONS CONCERNING AGENDA ITEMS 14 AND 17 (continued) (E/CN.4/Sub.2/1993/L.39, L.47, L.53, L.55 and L.56)

Draft resolution E/CN.4/Sub.2/1993/L.39 (Protection of minorities)

1. Mrs. DAES said that draft resolution E/CN.4/Sub.2/1993/L.39 was the outcome of lengthy consultations. The large number of sponsors testified to the respect and interest prompted by Mr. Eide's report (E/CN.4/Sub.2/1993/34 and Add.1-4), and the draft resolution therefore requested Mr. Eide to prepare a working paper on a more comprehensive programme for the prevention of discrimination and protection of minorities. She proposed that the draft resolution should be adopted without a vote.

2. Mr. ALFONSO MARTINEZ paid a tribute to Mr. Eide. Even though he was not himself a sponsor of the draft resolution, he thought that it was indeed necessary to ensure that the work continued. In order that the very intensive discussion of Mr. Eide's report should not be forgotten, he proposed that the preamble to the draft resolution should include the following additional paragraph:

> "Bearing in mind the opinions expressed during the discussion of the final report submitted by the Special Rapporteur".

3. Mrs. DAES proposed the following wording for the new paragraph:

> "Taking into account also the opinions expressed during the discussion of the report in question,".

4. Draft resolution E/CN.4/Sub.2/1993/L.39, as orally amended, was adopted without a vote.

5. Mr. EIDE said that the non-governmental organizations (NGOs) had had very little time to make their views on the question known and that they might be given more time to do so at the following session.

Draft resolution E/CN.4/Sub.2/1993/L.47 (Draft United Nations declaration on the rights of indigenous peoples)

6. Mr. SACHAR observed that the amendments submitted by Mrs. Daes (E/CN.4/Sub.2/1993/L.54/Rev.1) were not far removed from the relevant parts of the draft resolution submitted by Mr. Alfonso Martínez; he wondered whether the texts could be merged.

7. The CHAIRMAN pointed out to Mr. Alfonso Martínez, who had been about to introduce the draft resolution he was sponsoring, that it had been decided to dispense with introductions of draft resolutions in order to save the Sub-Commission's time.

8. Mr. GUISSE and Mr. HELLER agreed with Mr. Sachar that the texts proposed by Mr. Alfonso Martínez and Mrs. Daes were not really incompatible and suggested that they should consider merging them.

9. Mr. ALFONSO MARTINEZ said he took it that if he could not introduce draft resolution L.47, then the amendments contained in document L.54/Rev.1 would not be introduced either.

10. The CHAIRMAN said that the decision to dispense with introductions did not apply to amendments.

11. Mrs. DAES said that she did not wish to give any explanations about her proposed amendments but did wish to underline, for the benefit of her colleagues who thought that the two texts were similar, that there was in fact a fundamental difference between them, a difference which had been the subject of lengthy discussion in the Working Group. The draft declaration on the rights of indigenous peoples prepared by the Working Group on Indigenous Populations was precisely that - a draft text which ought to be considered by the Sub-Commission the following year so that it would be able to make its contribution to the text. Her only concern in the present case had been to try to help indigenous peoples. It would not be helping them to have the Working Group formally adopt the draft declaration, for thereafter it would not be possible to change it in any way, although many people had not yet seen it, much less studied it. The Sub-Commission must therefore give the draft declaration close consideration at its next session - in accordance with the usual procedure. It was also important for indigenous peoples to be able to take a full part in the work of the Sub-Commission and the Commission on Human Rights. She hoped therefore that Mr. Alfonso Martínez would be kind enough not to press for the formal adoption of the draft declaration by the Working Group at the present session.

12. The CHAIRMAN said that fair play should take precedence over the rules of procedure and that Mr. Alfonso Martínez should be given an opportunity to explain his draft resolution.

13. Mr. ALFONSO MARTINEZ said that his draft resolution was consistent in all respects with other texts of its kind; there was nothing in it which would impose an obligation on the Working Group on Indigenous Populations to complete its work in 1994. It was true that the Sub-Commission did not have time at the present session to consider the draft declaration as closely as it deserved, and certainly not in closed meetings. Paragraph 3 (c) of the draft resolution requested that the note of transmittal should contain an explicit statement that no further amendments to the text of the draft declaration would be accepted; that provision had been included partly to meet the concerns stated by members of the Working Group, including Mrs. Daes, who feared that the substantive debate might be reopened - a possibility which no member of the Working Group had envisaged. Accordingly, there would be no problem if that part of the paragraph was deleted.

14. It was a good idea to refer the text of the draft declaration to the Working Group but without - it was important to note - reopening the substantive debate, in order to enable the participants - NGOs and Governments - to state their views, which would be reflected in the report the Working Group would submit to the Sub-Commission in 1994. That report was important since it would enable the Sub-Commission - and especially those of its members who were not members of the Working Group - to gain a full picture of the content of the discussions. He was perfectly ready to accept the new

paragraph 3 (a) proposed by Mrs. Daes, and fully endorsed the idea of recommending to the Commission on Human Rights and the Economic and Social Council that indigenous peoples should be allowed to take part in the consideration of the draft declaration. On the other hand, the text proposed by Mrs. Daes as a replacement for subparagraph (d) did cause him problems. In any event, he was open to Mrs. Daes' suggestions and would not like the debate to close on an acrimonious note.

15. The CHAIRMAN suggested that the meeting should be suspended for a few minutes once all the draft resolutions had been considered in order to give Mr. Alfonso Martínez and Mrs. Daes time to find a compromise formula.

16. Mrs. DAES agreed to the Chairman's suggestion and requested that Mr. Heller and Mr. Eide, together with two other members of the Working Group on Indigenous Populations who were familiar with the question, should also take part in the consultations.

Draft resolution E/CN.4/Sub.2/1993/L.53 (Cultural and intellectual property of indigenous peoples)

17. Mr. ALFONSO MARTINEZ said that he wished to join the sponsors of the draft resolution.

18. Draft resolution E/CN.4/Sub.2/1993/L.53 was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1993/L.55 (Study on treaties, agreements and other constructive arrangements between States and indigenous populations)

19. Draft resolution E/CN.4/Sub.2/1993/L.55 was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1993/L.56 (Discrimination against indigenous peoples)

20. Mr. CHERNICHENKO said he was not sure that the Secretary-General was empowered to decide the question of the establishment of a permanent forum for indigenous peoples as requested in paragraph 6 of the draft resolution. He was, of course, not opposed to the idea but would like the point to be clarified.

21. Mrs. DAES pointed out that the World Conference on Human Rights had recommended the establishment of such a forum and the proclamation by the General Assembly of an international decade for indigenous peoples. Accordingly, the Secretary-General was fully empowered to consider establishing such a forum, which was in fact becoming indispensable since the Working Group on Indigenous Populations did not have a secretariat of its own and often had practical difficulties in carrying out its work.

22. Mr. SABOIA said that Mr. Chernichenko's comment was quite relevant. Paragraph 32 of the Vienna Programme of Action recommended that the General Assembly should proclaim an international decade for indigenous peoples and provide, within the framework of the decade, for the establishment of a permanent forum. It was thus primarily for the General Assembly to take a decision, and not the Secretary-General.

23. The CHAIRMAN said that the Secretary-General was not in fact requested to establish a permanent forum, but simply to consider the matter.

24. Draft resolution E/CN.4/Sub.2/1993/L.56 was adopted without a vote.

The meeting was suspended at 4.10 p.m. and resumed at 4.50 p.m.

Draft resolution E/CN.4/Sub.2/1993/L.47 and document E/CN.4/Sub.2/1993/L.54/Rev.1

25. Mrs. DAES said she was happy to announce that the consultations she had had with Mr. Alfonso Martinez, with Mr. Eide and Mr. Heller acting as mediators, had resulted in a compromise text on her amendment to paragraph 3 (d) of draft resolution E/CN.4/Sub.2/1993/L.47. The text proposed in document E/CN.4/Sub.2/1993/L.54/Rev.1 was replaced by the following text: "To consider the draft United Nations declaration at its forty-sixth session, in 1994, and, if possible, to submit it to the Commission on Human Rights with the recommendation that the Commission consider and adopt it at its fifty-first session, in 1995, on the understanding that the report of the Working Group on its twelfth session will contain a summary of general views expressed by the participants on the draft declaration". The text of the other amendments was unchanged.

26. Mr. ALFONSO MARTINEZ thanked Mrs. Daes, Mr. Hatano, Mr. Boutkevitch, Mr. Heller and Mr. Eide for their help. He was satisfied with the compromise, which provided a further illustration of effective collaboration among the experts in the Sub-Commission.

27. Mr. DESPOUY, Mr. GUISSE and Mrs. PALLEY said that they wished to join the sponsors of the draft resolution.

28. The CHAIRMAN suggested that the amendments submitted by Mrs. Daes should be incorporated in draft resolution E/CN.4/Sub.2/1993/L.47, which should be adopted without a vote.

It was so decided.

OTHER MATTERS

29. The CHAIRMAN asked Mrs. Daes whether, as agreed, she had prepared a reply to the letter addressed to the Sub-Commission by the Permanent Representative of the Mission of Peru to the United Nations Office at Geneva.

30. Mrs. DAES considered, having consulted two of her colleagues, that even though the Sub-Commission rightly condemned without reservation the atrocities committed in Peru, it could not take a position on the matter since it did not have sufficient information for that purpose.

31. Mr. CISSE (Secretary of the Sub-Commission), replying to a question put by Mr. Joinet at the previous meeting concerning the non-issue of the French versions of the summary records, informed the Sub-Commission that, owing to shortage of resources and staff, the language services had a backlog of 20,000 pages of documents and were therefore not yet able to issue the French

versions of the summary records of the Sub-Commission's meetings. The summary records of the meetings of other organs which had met recently, for example the Committee on the Elimination of Racial Discrimination, had not yet been issued either.

32. The CHAIRMAN informed the Sub-Commission that several NGOs had expressed the wish to make a joint statement on the work of the Sub-Commission. He called upon their representative to address the Sub-Commission.

33. Mr. KOTHARI (Habitat International Coalition), speaking on behalf of 29 other NGOs, said that the effective conduct of the Sub-Commission's work depended largely on fruitful cooperation between its experts and the NGOs. In its resolution 1993/28 the Commission on Human Rights had drawn attention to "the important contribution in general that non-governmental organizations in consultative status with the Economic and Social Council make to the work of the Sub-Commission", and stressed "the valuable role which the Sub-Commission, as a body of independent experts, can play, inter alia, in addressing new developments in the field of human rights and also in providing a forum for the contributions of non-governmental organizations in the field of new developments".

34. There was no doubt that the participation of NGOs in the Sub-Commission's proceedings and their access to the experts were indeed crucial. The NGOs were therefore concerned about the difficulty they were experiencing during the session in that regard. Their speaking-time had been severely reduced during the consideration of agenda items 7, 8 and 17, which the Sub-Commission had not dealt with adequately for lack of time. Given the uniqueness of the Sub-Commission's mandate and work, it was imperative that it should be able to devote sufficient time to some particularly important reports and studies. The experts should also show greater willingness to engage in open discussion with individual NGOs and participate in NGO briefings during the session, so that they would be better equipped to make balanced judgements on the complex issues before the Sub-Commission. Furthermore, the representatives of NGOs were unable to contribute freely to the Sub-Commission's work if they were subjected to direct or indirect pressure by Governments or even threats of reprisals, as had happened during the session.

35. The representatives of NGOs were also worried about the increasing number of statements by Governments which undermined the independence of the experts. The discussion of certain draft resolutions, for example those dealing with the situation of human rights in Sri Lanka, Tibet and East Timor, might call in question the credibility and effectiveness of the Sub-Commission as a body of specialized and independent experts and blur the dividing-line between the defensive positions of certain Governments with regard to their human rights record and the positions of some of the experts on the same issues. It was in fact essential, as the Commission had stressed in resolution 1993/28, that the impartiality and objectivity of the Sub-Commission and the independent status of its members and their alternates should continue to be its guiding principles. Those concerns were illustrated, for example, by the fact that the Sub-Commission had taken decisive action on the issue of 30 hunger-strikers in the United States but had refused to take action in the

case of much more serious violations of human rights committed in the United States and elsewhere, including Tibet and Sri Lanka. The Sub-Commission should be expected to apply human rights standards on a non-selective basis. It was imperative for it to review carefully its methods of work in order to bring them into line with the principles mentioned in resolution 1993/28. The Sub-Commission was a valuable resource for defenders of human rights throughout the world and a vital part of the United Nations human rights system. It was therefore essential that it should maintain the standards of rigour and quality which had made its reputation.

The meeting rose at 5.05 p.m.